

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1938**

**No. 40**

**THE UNION STOCK YARD AND TRANSIT COMPANY  
OF CHICAGO,**

*Appellant,*

*vs.*

**THE UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION, ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF ILLINOIS.**

**STATEMENT AS TO JURISDICTION.**

**RALPH M. SHAW,  
FREDERICK H. WOOD,  
WILLIAM F. RILEY,  
GUY A. GLADSON,  
BRYCE L. HAMILTON,**  
*Counsel for Appellants.*

## INDEX.

### SUBJECT INDEX.

	Page
Statement as to jurisdiction .....	1
Nature of the case and statutory provisions sus- taining jurisdiction .....	1
Date of the decree and application for appeal .....	3
Cases believed to sustain jurisdiction .....	3
Exhibit "A"—Opinion of the District Court of the United States for the Northern District of Illinois .....	5

### TABLE OF CASES CITED.

<i>Alton R. Co. v. United States</i> , 287 U. S. 229 .....	3
<i>Atchison, T. &amp; S. F. Ry. Co. v. United States</i> , 279 U. S. 768 .....	3
<i>Atchison, T. &amp; S. F. Ry. Co. v. United States</i> , 295 U. S. 193 .....	3
<i>Atlanta, B. &amp; C. R. Co. v. United States</i> , 296 U. S. 33 .....	3
<i>Piedmont &amp; Northern Ry. Co. v. United States</i> , 280 U. S. 469 .....	3
<i>United States v. Chicago, M. St. P. &amp; P. R. Co.</i> , 294 U. S. 499 .....	3
<i>United States v. Idaho</i> , 298 U. S. 105 .....	3
<i>United States v. Illinois Central R. Co.</i> , 263 U. S. 515 .....	3

### STATUTES CITED.

Act of October 22, 1913 known as Urgent Deficiency Appropriation Act (38 Stat. L. 219, 28 U. S. C. A., Secs. 43-48) .....	2
Interstate Commerce Act, Section 15(7) (49 U. S. C. A., Sec. 15(7)) .....	1
Judicial Code, Section 210 (28 U. S. C. A., Sec. 47a) .....	2, 3
Section 238 (28 U. S. C. A., Sec. 345) .....	3
United States Code Annotated, Title 28, Section 44 .....	3



IN THE  
DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION

---

In Equity.

No. 16200

---

THE UNION STOCK YARD AND TRANSIT COMPANY  
OF CHICAGO,

vs.

*Plaintiff,*

UNITED STATES OF AMERICA ET AL.,

*Defendants.*

---

**JURISDICTIONAL STATEMENT.**

---

On July 11, 1938, the Interstate Commerce Commission entered an order in a proceeding arising under Section 15(7) of the Interstate Commerce Act (49 U. S. C. A., Sec. 15(7)) (*Cancellation of Livestock Services at Chicago*, Investigation and Suspension Docket No. 4296, 227 I. C. C. 716) in which it required plaintiff to cancel, on or before August 17, 1938, certain schedules by which plaintiff proposed to cancel its tariff naming charges for loading and unloading carload shipments of livestock for railroads at its

stockyard in the City of Chicago, Illinois, and its tariff index. These were the only tariffs plaintiff had on file with the Interstate Commerce Commission. The schedules ordered cancelled, recited that no tariffs would thereafter be filed with the Commission by plaintiff. Plaintiff sought to cancel its tariffs on the ground that it was no longer a common carrier subject to the provisions of the Interstate Commerce Act. The effective date of the order of the Commission has been postponed from time to time, and it will become effective on January 1, 1940, unless set aside by the courts.

On or about the 23rd day of August, 1939, plaintiff filed its bill of complaint in the District Court pursuant to the provisions of the act of October 22, 1913 known as Urgent Deficiency Appropriation Act (38 Stat. L. 219, 28 U. S. C. A., Secs. 43-48), asking the Court, among other things, to set aside the said order of the Interstate Commerce Commission and to enjoin its enforcement. A statutory court comprised of one circuit judge and two district judges was convened. On March 9, 1939, after final hearing, the Court refused to grant the relief requested by plaintiff, or any of it, and entered a final decree dismissing said bill of complaint.

Section 210 of the Judicial Code (28 U. S. C. A., Sec. 47a) provides in part as follows:

"A final judgment or decree of the district court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. \* \* \* The Supreme Court may affirm, reverse, or modify as the case may require the final judgment or decree of the district court in the cases specified in section 44 of this title."

Section 44 of title 28 of the United States Code Annotated provides in part as follows:

"The procedure in the district courts . . . (b) in respect to cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission shall be as provided in sections 45, 45a, 46, 47, 47a and 48 of this title."

Section 238 of the Judicial Code (28 U. S. C. A. Sec. 345) provides in part as follows:

"A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections or parts of sections and not otherwise: . . .

(4) So much of sections 47 and 47a of this title as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money."

The date of the final decree of the District Court sought to be reviewed is March 9, 1939, and the date upon which plaintiff's application for appeal is presented is April 7, 1939.

Under section 47a of title 28 of United States Code Annotated and section 345 of the same title, plaintiff under the facts here presented may take an appeal direct to the Supreme Court of the United States. Authorities which sustain this proposition are as follows: *United States v. Idaho*, 298 U. S. 105; *Atlanta, B. & C. R. Co. v. United States*, 296 U. S. 33; *Atchison, T. & S. F. Ry. Co. v. United States*, 295 U. S. 193; *United States v. Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499; *Alton R. Co. v. United States*, 287 U. S. 229; *Piedmont & Northern Ry. Co. v. United States*, 280 U. S. 469; *Atchison, T. & S. F. Ry. Co. v. United States*, 279 U. S. 768; *United States v. Illinois Central R. Co.*, 263 U. S. 515.



A transcript of the oral opinion delivered at the close of oral argument on February 20, 1939 by the Honorable Evan A. Evans, speaking for the statutory court, is appended hereto.

Respectfully submitted, .

RALPH M. SHAW,  
FREDERICK H. WOOD,  
WILLIAM F. RILEY,  
GUY A. GLADSON,  
BRYCE L. HAMILTON,

*Solicitors for Plaintiff, The Union Stock  
Yard and Transit Company of Chicago.*

Address for service: 1400 First National Bank Building,  
Chicago, Illinois.

Dated April 7, 1939.

**EXHIBIT "A".****Opinion.**

**Justice EVANS:**

In view of the amount of work which we have at all times on our table, we believe that in these three-judge cases we should dispose of them at the time of the argument, if we are all of us thoroughly convinced as to the soundness of the views which we hold are the prevailing views.

In the present case the question is one which doubtless will go further, but we have nevertheless approached it as though it was for us to determine, and we are satisfied that the decision in this case must be for the defendant; that the only question involved is one of jurisdiction and that, because of the definitions that are given to "common carrier" and to "transportation", the services rendered by the plaintiff make the plaintiff come within the provisions of the interstate commerce law. That is strengthened by the late decision of the Denver Stockyards case.

Under all the circumstances we have reached the conclusion that the judgment in this case should be for the defendant.

(1577)